S.B.CIVIL MISC. APPEAL NO.357/2001

National Insurance Company Ltd.
vs.
Smt. Amen Khatoon and others.

DATE OF JUDGMENT ::: 25.1.2006

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. Jagdish Vyas, for the appellant
Mr. A Khichi for Mr. RS Choudhary, for the respondents

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Heard learned counsel for the parties.

Though this appeal has been listed for orders on stay petition, but at the request of learned counsel for the parties, the appeal itself is heard finally in view of the fact that in this case, the appellant insurance company has been exonerated by the Motor Accident Claims Tribunal from actual liability while awarding compensation in favour of the claimants by award dated 8.1.2001 after holding that the driver of the vehicle was not having a driving license to drive the motor vehicle.

The appellant company has challenged the award on the ground that no direction should have been issued against the appellant company to pay the compensation amount to the claimants. It is also submitted that the compensation

awarded to the claimants is too excessive. It is submitted that the Tribunal awarded interest at the rate of 12% p.a. which is on higher side and this should be reduced appropriately.

Learned counsel for the claimants submitted that the insurance company cannot avoid the liability of initial payment of compensation amount and the appellant's right have been safeguard by the Tribunal itself and the appellant has been given right to recover the amount from the insured. It is also submitted that the Tribunal has awarded compensation on lower side and has not calculated the compensation amount by adding future prospects of earning of deceased despite the fact that the deceased was of the age of 25 years only. It is also submitted that the award of interest is not high in view of the fact that the accident occurred in the year 1998 and at that time, the rate of interest was not lower than 12% per annum but it was more than 12%. It is also submitted that the appellant did not took any such plea about interest before the Tribunal. The claimants also submitted cross objections for enhancement of award amount. According to the claimants, the deceased was earning Rs.6,000/- per month whereas the tribunal assessed the income as Rs.1,700/- - Rs.1,800/- only. The tribunal has not awarded compensation for loss of cattle.

I have considered the submissions of learned counsel for the parties.

In view of the fact that the appellant has been exonerated by the Tribunal itself from the actual liability, I do not find any illegality in the impugned award so far as rights of the appellants are concerned. Direction to the appellant to pay the compensation amount with liberty to the appellant to recover from the owner is in consonance with the law laid down by the Hon'ble Apex Court in various judgments. Therefore, on this count also, the appellant's interest has been safeguarded and the appellant should not have grievance against the impugned award.

So far as award of interest is concerned, the Tribunal has awarded interest at the rate of 12% in a case where accident occurred in the year 1997 and not in the year 1998. The interest has been awarded from the date of submitting the claim petition i.e. from 2.1.1998 and not from the date of accident i.e. 7.10.1997. The interest amount awarded is not so high so as to call for interference of this Court in appellate jurisdiction in a case where the issue was not raised before the Tribunal. The amount awarded as Rs.3,60,000/- as loss due to death of a young man of age of 25 years cannot be said to be excessive in any manner and in this case, the plea of the respondents/claimants is that award is too law. The Tribunal has not taken into account the amount of future prospects of earning of deceased and also has not given deduction while computing compensation of the amount which

the deceased would have incurred for himself, therefore, there will be no much difference in total amount if both above, income and deduction are considered. The compensation appears to be just and reasonable. Therefore, there is no substance in appeal as well as in cross objection.

Learned counsel for the appellant submits that in view of the judgment of the Hon'ble Supreme Court, the amount can be released in favour of the claimants after obtaining security for payment from the insured – owner of the vehicle.

The accident occurred in the year 1997 and this appeal is pending since 2001. The award was passed in the year 2001 giving right to the insurance company to recover the amount from the owner. It has not been shown by the appellant company as to what steps have been taken by the appellant to recover the amount from the owner. Security from the owner can be demanded from the insured while disbursing the amount to the claimant in the light of Hon'ble Supreme Court but that does not mean that the claimants can be deprived from the benefit of the award amount because of the inaction of the insurance company or because of the fact that the security could not have been obtained from the insured for such a long period. It will be punishing the claimant without fault of the claimant and if the payment to the claimants will be deferred for such a long period, then virtually it will be against the spirit of insurance policy which are made compulsorily to give

benefit to the innocent persons who met with accident on road for no fault of their. Therefore, this Court is of the opinion that there is no need to pass any further direction in this matter on the plea raised by the appellant insurance company.

In view of the above, this appeal as well as the cross objections, having no merit, are hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya